

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAMES D. LYONS,)	CASE NO. 4:03CV0244
)	
Plaintiff,)	
)	
v.)	JUDGE PETER C. ECONOMUS
)	
UNITED STATES OF AMERICA,)	
)	ORDER
)	
Defendant.)	

This matter is before the Court upon the report and recommendation of Magistrate Judge James S. Gallas. (Dkt. # 69). Also before the Court are the United States of America's objection to the Magistrate's report and recommendation (Dkt. # 71), Plaintiff James D. Lyons' objections to the report and recommendation (Dkt. # 73), and Plaintiff James D. Lyons' response to the United States of America's objections (Dkt. # 75).

Plaintiff James D. Lyons, ("Plaintiff"), filed a complaint on February 7, 2003, alleging, *inter alia*, violations of the Federal Tort Claims Act. (Dkt. # 1). This matter was referred to Magistrate Judge James S. Gallas for general pre-trial supervision on April 8, 2003. (Dkt. # 7). On March 24, 2006, Defendant, the United States of America ("Defendant") filed a Motion to Dismiss and/or Transfer this action to the United States District Court for the Eastern District of North Carolina. (Dkt. # 63). Plaintiff filed his

memorandum in opposition on June 19, 2006. (Dkt. # 68).

On July 17, 2006, the Magistrate Judge issued a report and recommendation. In his report, the Magistrate Judge recommended that the motion to transfer venue be denied because Defendant did not object to venue in its first responsive pleading. (Dkt. # 69). The report further recommended that Defendant's motion to dismiss be denied and the case set for trial. According to the Magistrate Judge, Plaintiff treated Defendant's motion to dismiss as a motion for summary judgment. The Magistrate Judge reported that it would be unfair to force Plaintiff to respond to arguments that Defendant did not develop in its motion to dismiss. (Dkt. # 69). As such, the Magistrate Judge recommended that the motion to dismiss be denied, and that "the motion by [Defendant] to transfer and/or dismiss is a mere exercise, and should be denied." (Dkt. # 69).

The Court has reviewed, *de novo*, the report and recommendation of the Magistrate Judge. The Court finds that the report and recommendation is well-supported. Therefore, Magistrate Judge Gallas' report and recommendation is hereby **ADOPTED** (Dkt. # 69) and both parties' objections are overruled. Accordingly, Defendant's Motion to Dismiss and/or Transfer is hereby **DENIED**. (Dkt. # 63).

IT IS SO ORDERED.

/s/ Peter C. Economus - March 2, 2007
PETER C. ECONOMUS
UNITED STATES DISTRICT JUDGE